

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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RAMIRO DE LA CRUZ,
Plaintiff,
vs.
STATE OF NEVADA, et al.,
Defendant

Case No. 2:22-cv-00450-GMN-VCF

ORDER

**APPLICATION TO PROCEED IN FORMA
PAUPERIS (EFC NO. 1)**

Pro se plaintiff Ramiro De la Cruz filed an application to proceed in forma pauperis (IFP). ECF No. 1. I deny De la Cruz's IFP application without prejudice.

DISCUSSION

Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action “without prepayment of fees or security thereof” if the plaintiff submits a financial affidavit that demonstrates the plaintiff “is unable to pay such fees or give security therefor.” The Ninth Circuit has recognized that “there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status.” *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to qualify for a waiver of costs and fees but he must demonstrate that because of his poverty he cannot pay those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). If the court determines that an individual's allegation of poverty is untrue, “it shall dismiss the case.” 28 U.S.C. § 1915(e)(2).

The applicant's affidavit must state the facts regarding the individual's poverty "with some particularity, definiteness and certainty." *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have the discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed in forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he "failed to verify his poverty adequately"). "Such affidavit must include a complete statement of the plaintiff's personal assets." *Harper v. San Diego City Admin. Bldg.*, No. 16cv00768 AJB (BLM), 2016 U.S. Dist. LEXIS 192145, at 1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient grounds in themselves for denying an in forma pauperis application. Cf. *Kennedy v. Huibregtse*, 831 F.3d 441, 443-44 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on in forma pauperis application).

The District of Nevada has adopted three types of IFP applications: a "Prisoner Form" for incarcerated persons and a "Short Form" (AO 240) and "Long Form" (AO 239) for non-incarcerated persons. The Long Form requires more detailed information than the Short Form. The court typically does not order an applicant to submit the Long Form unless the Short Form is inadequate, or it appears that the plaintiff is concealing information about his income for determining whether the applicant qualifies for IFP status. When an applicant is specifically ordered to submit the Long Form, the correct form must be submitted, and the applicant must provide all the information requested in the Long Form so that the court is able to make a fact finding regarding the applicant's financial status. See e.g. *Greco v. NYE Cty. Dist. Jude Robert Lane*, No. 215CV01370MMDPAL, 2016 WL 7493981, at 3 (D. Nev. Nov. 9, 2016), report and recommendation adopted sub nom. *Greco v. Lake*, No. 215CV001370MMDPAL, 2016 WL 7493963 (D. Nev. Dec. 30, 2016).

1 Plaintiff De la Cruz submitted the Short Form IFP application. ECF No. 1. Plaintiff left almost
2 all the questions on the application blank, except that at the bottom of the form, he noted he receives
3 nearly \$5,000 per month in benefits. In response to question five about what property he owns, if any, he
4 wrote a zero. On the docket, however, he lists a single-family home as his address. In response to
5 question six regarding his bills, he wrote “Do not have a number for (Food, clothing, transportation,
6 Lawn care, pet care (sic).”

7 Based on the number of questions he left blank or did not respond fully to, I cannot determine
8 whether the applicant qualifies for IFP status. Plaintiff indicates that he makes almost \$5,000 a month
9 but since he does not know how much he spends, it appears he has no bills. I will give plaintiff one
10 opportunity to file a complete IFP application. I order that the plaintiff must complete the Long Form
11 application. I order that he may not respond with a zero in response to any question without providing an
12 explanation for each of the questions. He also may not leave any questions blank. Since he must
13 complete the Long Form, plaintiff is required to provide comprehensive information regarding his
14 sources of income, employment history, bank accounts, assets, monthly expenses with dollar amounts,
15 age, how he pays his bills, and his years of schooling, among other things.

16 I deny plaintiff’s IFP application without prejudice. I give plaintiff 30 days to file an updated IFP
17 application. Plaintiff must fully answer all applicable questions and check all applicable boxes. Plaintiff
18 may alternatively pay the filing fee in full. Since I deny plaintiff’s IFP application, I do not screen his
19 complaint now.

20 ACCORDINGLY,

21 I ORDER that De la Cruz’s application to proceed in forma pauperis (ECF No. 1) is DENIED
22 without prejudice.

23 I FURTHER ORDER that De la Cruz has until Monday, May 2, 2022, to file an updated IFP
24

1 application using the Long Form as specified in this order or pay the filing fee. Failure to timely comply
2 with this Order may result in case closure or a recommendation for dismissal with prejudice.

3 **NOTICE**

4 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
5 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
6 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
7 may determine that an appeal has been waived due to the failure to file objections within the specified
8 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

9 This circuit has also held that (1) failure to file objections within the specified time and (2)
10 failure to properly address and brief the objectionable issues waives the right to appeal the District
11 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
12 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
13 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any
14 change of address. The notification must include proof of service upon each opposing party's attorney,
15 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may
16 result in dismissal of the action.
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18 IT IS SO ORDERED.

19 DATED this 1st day of April 2022.



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21 CAM FERENBACH
22 UNITED STATES MAGISTRATE JUDGE
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